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CENTRAL INTELLIGENCE AGENCY  
WASHINGTON, D.C. 20505

Executive Registry

76-8900

18 AUG 1976

The Honorable John O. Marsh, Jr.  
Counselor to the President  
The White House Office  
Washington, D. C. 20500

Dear Jack:

This letter concerns Section 4(a)(5) of Executive Order 11905 and the adverse consequences that will ensue if the CIA and the other Intelligence Community agencies are bound to conform their practices and procedures to what I regard as the unreasonable interpretation of that section that is set forth in a memorandum dated 7 May 1976 from the Office of Legal Counsel, Department of Justice, to the White House, a copy of which memorandum is attached. I would like to ask your help in obtaining some relief from that interpretation.

Section 4(a)(5) provides that senior officials of the Intelligence Community shall:

Report to the Attorney General that information which relates to detection or prevention of possible violations of law by any person, including an employee of the senior official's department or agency.

According to the attached Department of Justice memorandum, this language must be construed to require the reporting of all possible violations of federal law within the Department's investigative or prosecutorial jurisdiction, whether criminal or civil, including possible violations of the District of Columbia Code, by any person, whether or not an employee of the CIA or other Intelligence Community agency.

To begin with, you should be aware that the reporting obligations placed on Intelligence Community agencies by Section 4(a)(5), as construed by the Department of Justice to extend to the conduct of non-Government personnel and to possible civil wrongs as well as criminal misconduct, are far more

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sweeping and onerous than the statutory obligations imposed on heads of all federal agencies, including intelligence agencies, by 28 U.S.C. §535. This latter statute requires only such reports as may relate to possible violations of Title 18 (Crimes and Criminal Procedure) of the United States Code by Government officers or employees. While apparently it was intended by the adoption of Section 4(a)(5) to hold intelligence agencies to a more rigorous reporting standard than is made applicable by 28 U.S.C. §535 to federal agencies in general, I feel certain that it could not have been intended to hobble the intelligence agencies in the performance of their authorized functions. Yet that will be the result if Section 4(a)(5) must be read as having the meaning and scope attributed to it by the Department of Justice. I can best illustrate this point by reference to the CIA, but I believe the harmful and disruptive impacts would be felt throughout the Intelligence Community.

#### Applicants.

Applicants for CIA employment, and other persons being considered for non-employment relationships with the CIA, are screened by the Office of Security. In the case of applicants for employment, the screening includes the administration of a polygraph examination, with follow-up questions often asked in order to clarify earlier responses or reactions. A good deal of personal information, some of it unfavorable, is disclosed during these screening procedures, and as a general rule that information is received in confidence. Were it otherwise -- that, to put the matter in the present context, were a formal report to the Department of Justice required whenever the CIA received any information indicating possible violations of civil or criminal law, no matter how minor such violations -- these screening procedures would cease to be effective and the pool of applicants would be greatly reduced.

#### Employees.

CIA employees are encouraged to be forthcoming in discussing work-related problems with their colleagues or superiors and to solicit guidance before the problems grow into serious situations. These policies would be frustrated if employees perceived that the price of frank discussion would be a report to the Department of Justice whenever there was any indication of any infraction of law, even a technical or inadvertent infraction.

#### U. S. Citizen Sources.

CIA contact officers often obtain valuable intelligence information on a voluntary basis from U. S. citizens, who in turn acquire that information in the course of their personal or business activities abroad. The assurances of absolute confidentiality that are customarily given to such sources would be foreclosed by the Department of Justice interpretation of Section 4(a)(5). In the absence of these assurances, much of the intelligence information now collected would never be imparted to CIA contact officers.

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Sources Abroad.

25X1 Clandestine service case officers develop close and confidential relationships with sources abroad based on mutual trust. From time to time such sources make comments about their personal or business affairs that reveal possible violations of U. S. law. The case officer cannot effectively develop and maintain sources and play the role of informer at the same time.

Section 4(a)(5).

In all the circumstances mentioned above, the CIA's ability to function would be seriously impaired by a strict adherence to the reporting obligations imposed by Section 4(a)(5), as construed by Justice.

As you know, the CIA and other intelligence agencies have been under intense scrutiny over the last several years. A host of procedures and restrictions have emerged from this process, restrictions which represent for the most part considered executive and legislative judgments about how the business of intelligence agencies should be conducted. In this instance, however, in consequence of the Justice Department interpretation of Section 4(a)(5), we are threatened with serious and in my view unworkable restraints that never were intended and certainly would have been rejected had they been considered, since they are fundamentally at odds with our mission.

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We have thus far been unsuccessful in persuading the Justice Department to alter its view about the meaning and scope of Section 4(a)(5). At the same time we have notified the IOB that we are not in compliance with the section, as construed by Justice. I am therefore appealing to your good sense and urging that you ask Justice to have a second look at its interpretation in light of this summary of our objections. If nothing can be done along this line, I believe that consideration should be given to an amendment of Section 4(a)(5). While I recognize the difficulties that stand in the way of that course, I think it would be better to face those difficulties and follow that course rather than to leave CIA and the other intelligence agencies saddled with responsibilities that were never intended and that conflict with basic intelligence functions.

Sincerely,

  
George Bush  
Director

Attachment

*Each - this matter  
really needs top level  
urgent attention - Thanks,  
GB*

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